

### Remarks

The Office Action acknowledges the cancelation of claims 1-69 and 76-93 and notes that claims 70-75 and 94-109 are pending. The rejection set forth in the Final Office Action, however, rejects claims 62-75, 78-82, and 84-93 as being obvious under § 103(a) in view of US Patent 5,345,743 to Baier in view of US Patent 5,732,517 to Milikovsky. The Applicant thus respectfully submits claims 94-109 are not rejected, patentable, and in condition for allowance. The Applicant thus requests clarification of the rejected claims or an indication of allowance for claims 94-109.

The Applicant submits all of the claims are patentable over the cited art and are in condition for allowance. The interpretation of the Milikovsky reference in the Final Office Action ignores the evidence submitted with Applicant's last response showing that other references in the art use the same visual appearance for spacer elements that are not cavities. The Final Office Action ignores this evidence and continues to conclude that one of ordinary skill in the art could only conclude that Milikovsky discloses the subject matter described in the Final Office Action regardless of the evidence of other conclusions reasonable to those of ordinary skill in the art.

The Applicant also respectfully submits the rejection in the Final Office Action fails because the secondary reference does not disclose the features related to the insulating cavities recited in the claims. The Applicant respectfully traverses the interpretation of the Milikovsky reference because the Milikovsky reference does not disclose the items set forth in the Final Office Action. The Office Action concludes that Milikovsky

teaches a window unit (Fig. 2) having glass panes and a spacing elements (3) between glass panes (2 and 4); the spacing elements (3) defining a body (B), the body (B) defining a plurality of insulating cavities (C); wherein the cross section of body material (B) being larger than the cross sectional area of the insulating cavities (C); wherein the body (B) defining a longitudinal direction; and each of the insulating cavity (C) extending continuous in the longitudinal direction; the cavities (C) are spaced apart from one another; and wherein the cavity (C) has a width, the space between the cavities (C) being equal to or greater than the width of either cavity.

The Applicant respectfully submits this interpretation of Milikovsky is not supported by any material within the four corners of the Milikovsky document. Milikovsky discloses an insulating glazing unit and a pair of spacers. Milikovsky does not, however, disclose, teach, or suggest anything about the construction of the spacer body except that the spacer provides a hermetic seal for the glazing unit. Nothing in Milikovsky discloses (i) a plurality of insulating cavities, (ii) the relative cross sections of the different portions of the spacer, (iii) the continuity of what the Office Action refers to as insulating cavities in the longitudinal direction. The Applicant respectfully traverses the application of Milikovsky in this manner. The Milikovsky drawings are not to scale and nothing in the document describes the features described in the Final Office Action.

The Office Action submits that Milikovsky has an illustration that is "exactly the same as applicant's illustration of cavities and thus clearly constitute cavities as readily apparent to any person having ordinary skill in the art." Page 4 of the Final Office Action. The Applicant submits the conclusion set forth in the Office Action is entirely based on the teachings of Applicant's current specification because the conclusion entirely relies on Applicant's specification to interpret the Milikovsky reference. Such reasoning relies on hindsight because there is nothing in Milikovsky that explains what the illustration shows. This type of reasoning is impermissible in support of an obviousness rejection.

In addition to the lack of disclosure in the Milikovsky reference, the Applicant submits the United States Patent and Trademark Office has made a ruling on the record of this application that states that the spacers, such as those shown in Milikovsky, and the presently-claimed muntin bar are independently patentable.

There is thus no reason why one of ordinary skill in the art would combine the teachings of a spacer disclosure with a muntin disclosure. Spacers and muntin bars are independent and distinct elements in the insulating glass industry. In the Office Action dated June 2, 2004, in this patent application, the official position of the United States Patent and Trademark Office established that the muntin bar claims of the present application are patentably distinct from the spacer claims of the application. The Applicant notes that the official position of the United States Patent and Trademark Office is that muntins and spacers are independently patentable as set forth in the office action dated June 2, 2004, the pertinent portion reproduced below:

1. The inventions are distinct, each from the other because of the following reasons:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-21, 29, drawn to muntin bar element, classified in class 52, subclass 455.
- II. Claims 22-28, drawn to apparatus of a spacer, classified in class 52, subclass 786.13.

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions used as spacer between glass panes.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

As described in the June 2, 2004, Office Action, the invention groups are "unrelated" and "have acquired a separate status in the art." Id. The office action specifically concludes that the groups (muntins and spacers) are "distinct." Id. MPEP § 802.01 states "Related inventions are distinct if the inventions as claimed are not connected in at least one of design, operation, or effect (e.g., can be made by, or used in, a materially different process) and wherein at least one invention is PATENTABLE

(novel and nonobvious) OVER THE OTHER (though they may each be unpatentable over the prior art). (underlining added) The Applicant thus submits that the June 2, 2004, Office Action makes clear that muntin inventions are distinct from – and thus PATENTABLE over – spacer inventions. As such, the claimed muntin bar configurations are distinct from – and thus patentable over – the Milikovsky spacer disclosures. The Final Office Action ignores the determine set forth in the June 2, 2004, Office Action and now concludes there is no difference between muntin bars and spacers (Page 5 of the Final Office Action). The difference is that spacers are structure items that maintain the spacing of the glass panes. Muntin bars are not. Muntin bars usually do not touch either glass pane but may engage on the glass panes. Muntin bars do not have to be configured to hold glass apart. In addition, spacers do not divide glass into separate visual portions. The Applicant submits that one of ordinary skill in the art would not seek to combine features of unrelated inventions that have acquired a separate status in the art. One of ordinary skill in the art would thus not look to a spacer disclosure (Milikovsky) to modify the muntin disclosure of Baier.

In view of the forgoing, the Applicant submits the spacer teachings of Milikovsky cannot be properly combined with the muntin bar teachings of Baier under §103(a). Spacers and muntin bars are independent and distinct inventions serving different purposes and functions in an insulating glass unit. The Applicant thus submits there is no suggestion or motivation in the references to combine the teachings. Further, there is nothing in the cited references that establishes a reasonable expectation of success. A *prima facie* case of obviousness thus cannot be established and the claims are thus patentable over the cited combination.

In view of the foregoing, the Applicant respectfully requests reconsideration of the claims and most earnestly solicits the issuance of a formal Notice of Allowance for the claims.

Please call the undersigned attorney if any issues remain after this amendment.



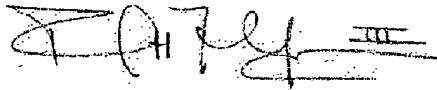
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